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APPELLANT PRO SE:

**BRANDON M. SMITH**  
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ATTORNEYS FOR APPELLEES:

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**IN THE  
COURT OF APPEALS OF INDIANA**

BRANDON M. SMITH,

Appellant,

VS.

REVIEW BOARD OF THE INDIANA  
DEPARTMENT OF WORKFORCE  
DEVELOPMENT and FORGE STAFFING,  
INC.,

Appellees.

[illegible]

No. 93A02-0701-EX-64

APPEAL FROM THE REVIEW BOARD OF THE  
DEPARTMENT OF WORKFORCE DEVELOPMENT

The Honorable Steven F. Bier, Chairperson,  
The Honorable George H. Baker, Magistrate,  
And The Honorable Sheri L. Clark, Member  
Cause No. 06-R-3116

**August 10, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Brandon Smith appeals the dismissal of his administrative appeal of the denial of his request for unemployment benefits. The sole issue restated issue for our review is: did the Indiana Department of Workforce Development Review Board (the Review Board) err in dismissing Smith's appeal.

We affirm.

Forge Staffing, Inc. (Forge) hired Smith in December 2005 and discharged him in February 2006. Following his discharge, Smith applied for unemployment benefits. In May 2006, an Indiana Department of Workforce Development deputy issued a determination of eligibility and awarded Smith unemployment benefits. Forge appealed, and on June 15, 2006, an Administrative Law Judge (ALJ) reversed the deputy's eligibility determination. Smith filed an appeal with the Review Board in a September 25, 2006 letter. On October 12, 2006, the Review Board dismissed the appeal as untimely filed. Smith appeals.

Although Smith argues that he was discharged without just cause and should therefore be awarded unemployment benefits, he appeals the order dismissing his appeal as untimely. The issue before us is whether the Review Board properly dismissed his appeal.

The time period for perfecting the appeal of an ALJ's determination is set forth in

Ind. Code Ann. § 22-4-17-3 (West, PREMISE through 2006 Second Regular Session), which provides as follows:

Unless such a request for hearing is withdrawn, an administrative law judge, after affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy. The parties shall be duly notified of such decision and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken by the commissioner or by any party adversely affected by such decision to the review board.

An additional three days is added to the prescribed time period where notice is served by mail. I.C. § 22-4-17-14(c) (West, PREMISE through 2006 Second Regular Session) Thus, an aggrieved party seeking review of an ALJ's determination must file an appeal within a maximum of eighteen days. If no appeal is taken within the statutorily prescribed time, I.C. § 22-4-17-3 mandates that the ALJ's ruling "*shall* be deemed to be the final decision of the review board." (Emphasis supplied.)

Prior cases have strictly construed I.C. 22-4-17-3 to require dismissal for lack of jurisdiction where an appeal has not been timely filed. *See Szymanski v. Review Board of the Indiana Department of Workforce Development*, 656 N.E.2d 290 (Ind. Ct. App. 1995) and cases cited therein. The Indiana Supreme Court, however, recently explained that noncompliance with a statutory prerequisite implicates neither personal nor subject matter jurisdiction. *Packard v. Shoopman*, 852 N.E.2d 927 (Ind. 2006). This is because timeliness of a filing relates to neither the merits of the controversy nor the competence of the court to resolve it. *Id.*

Rather, I.C. 22-4-17-3 simply sets forth the statutory prerequisites to appeal an ALJ's determination. Because this is a statutory prerequisite issue rather than a jurisdictional one, however, this issue can be waived or procedurally defaulted if not timely raised. *Id.* For example, in *Packard*, the Indiana Supreme Court concluded that the Clay Township Assessor waived any objection to the timeliness of Shoopman's filing where the Assessor did not object to the timeliness of Shoopman's complaint until more than a year after it had been filed. *Id.*

Here, however, the Review Board promptly objected to the untimeliness of Smith's attempted appeal and his lack of compliance with the statutory prerequisite. Under these circumstances, the Review Board properly dismissed Smith's untimely appeal.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.